

Senate Bill No. 352

CHAPTER 46

An act to amend Sections 1536.1, 1538.5, and 1567.3 of the Health and Safety Code, and to amend Section 740 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor August 5, 2009. Filed with
Secretary of State August 6, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

SB 352, Dutton. Juvenile offenders: health facilities.

(1) Under existing law, before the placement of certain minors who are wards of the court due to a violation of law may be made in an out-of-county facility, the parole or probation officer in the county of residence is required to send written notice of the placement, including specified information, to the probation officer of the receiving county. A violation of these provisions is a misdemeanor.

This bill would allow the notice to be made in writing, by fax, or electronic transmission. Additionally, the bill would require gang affiliation, as defined, to be included in the information sent to the receiving county. The bill would also require that a copy of the notice be sent, at the same time it is sent to the receiving county, to the community care facility where the ward is being placed, and would require the community care facility to maintain a copy of the notice on file.

(2) Under existing law, if a ward of the court, as described above, who is placed in an out-of-county community care facility, has his or her board and care funded through the Aid to Families with Dependent Children-Foster Care program, a plan for supervision and visitation is required to be developed by the county of residence.

This bill would require, in addition to the plan for supervision and visitation, that the sending county document information regarding any known gang affiliation or dangerous behavior that indicates the ward may pose a safety concern to the receiving county. It would also require information related to gang affiliation to be included in a case plan required to be developed for the ward pursuant to existing law.

(3) Under existing law, a group home is required to annually report all incident reports involving a response by local law enforcement or emergency services personnel that were sent to a placement agency other than the county in which the group home is located.

This bill would expressly require a group home, at the request of the probation department of the county in which the group home facility is located, to notify a probation official, as specified, of unusual incidents, including those that concern runaway incidents.

This bill would also require the requesting probation department to maintain the confidentiality of any identifying information about the ward contained in the notification and prohibit the probation department from sharing, transferring, or otherwise releasing the identifying information to a third party unless otherwise authorized by state or federal law.

(4) Existing law requires a placement agency, as defined, to notify the appropriate licensing agency of any known or suspected incidents, as specified, that would jeopardize the health and safety of residents at a community care facility. A violation of these provisions is a misdemeanor.

This bill would add sexual abuse and a situation in which the residents are inadequately supervised to the list of reportable incidents.

(5) Because the bill would impose additional duties on the counties and create a new crime, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Section 1536.1 of the Health and Safety Code is amended to read:

1536.1. (a) "Placement agency" means a county probation department, county welfare department, county social service department, county mental health department, county public guardian, general acute care hospital discharge planner or coordinator, conservator pursuant to Part 3 (commencing with Section 1800) of Division 4 of the Probate Code, conservator pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code, and regional center for persons with developmental disabilities, that is engaged in finding homes or other places for placement of persons of any age for temporary or permanent care.

(b) A placement agency shall place individuals only in licensed community care facilities, facilities that are exempt from licensing under Section 1505 or if the facility satisfies subdivision (c) of Section 362 of the Welfare and Institutions Code, or with a foster family agency.

(c) No employee of a placement agency shall place, refer, or recommend placement of a person in a facility operating without a license, unless the facility is exempt from licensing under Section 1505 or unless the facility satisfies subdivision (c) of Section 362 of the Welfare and Institutions Code. Violation of this subdivision is a misdemeanor.

(d) Any employee of a placement agency who knows, or reasonably suspects, that a facility that is not exempt from licensing is operating without a license shall report the name and address of the facility to the department. Failure to report as required by this subdivision is a misdemeanor.

(e) The department shall investigate any report filed under subdivision (d). If the department has probable cause to believe that the facility that is the subject of the report is operating without a license, the department shall investigate the facility within 10 days after receipt of the report.

(f) A placement agency shall notify the appropriate licensing agency of known or suspected incidents that would jeopardize the health or safety of residents in a community care facility. Reportable incidents include, but are not limited to, all of the following:

- (1) Incidents of physical or sexual abuse.
- (2) A violation of personal rights.
- (3) A situation in which a facility is unclean, unsafe, unsanitary, or in poor condition.
- (4) A situation in which a facility has insufficient personnel or incompetent personnel on duty.
- (5) A situation in which residents experience mental or verbal abuse.
- (6) A situation in which residents are inadequately supervised.

SEC. 2. Section 1538.5 of the Health and Safety Code is amended to read:

1538.5. (a) (1) Not less than 30 days prior to the anniversary of the effective date of a residential community care facility license, except licensed foster family homes, the department may transmit a copy to the board members of the licensed facility, parents, legal guardians, conservators, clients' rights advocates, or placement agencies, as designated in each resident's placement agreement, of all inspection reports given to the facility by the department during the past year as a result of a substantiated complaint regarding a violation of this chapter relating to resident abuse and neglect, food, sanitation, incidental medical care, and residential supervision. During that one-year period the copy of the notices transmitted and the proof of the transmittal shall be open for public inspection.

(2) The department may transmit copies of the inspection reports referred to in paragraph (1) concerning group homes, as defined by regulations of the department, to the county in which a group home facility is located, if requested by that county.

(3) A group home facility shall maintain, at the facility, a copy of all licensing reports for the past three years that would be accessible to the public through the department, for inspection by placement officials, current and prospective facility clients, and these clients' family members who visit the facility.

(b) The facility operator, at the expense of the facility, shall transmit a copy of all substantiated complaints, by certified mail, to those persons described pursuant to paragraph (1) of subdivision (a) in the following cases:

(1) In the case of a substantiated complaint relating to resident physical or sexual abuse, the facility shall have three days from the date the facility receives the licensing report from the department to comply.

(2) In the case in which a facility has received three or more substantiated complaints relating to the same violation during the past 12 months, the facility shall have five days from the date the facility receives the licensing report to comply.

(c) A residential facility shall retain a copy of the notices transmitted pursuant to subdivision (b) and proof of their transmittal by certified mail for a period of one year after their transmittal.

(d) If a residential facility to which this section applies fails to comply with this section, as determined by the department, the department shall initiate civil penalty action against the facility in accordance with this article and the related rules and regulations.

(e) Not less than 30 days prior to the anniversary of the effective date of the license of any group home facility, as defined by regulations of the department, at the request of the county in which the group home facility is located, a group home facility shall transmit to the county a copy of all incident reports prepared by the group home facility and transmitted to a placement agency, as described in subdivision (f) of Section 1536.1, in a county other than the county in which the group home facility is located that involved a response by local law enforcement or emergency services personnel, including runaway incidents. The county shall designate an official for the receipt of the incident reports and shall notify the group home of the designation. Prior to transmitting copies of incident reports to the county, the group home facility shall redact the name of any child referenced in the incident reports, and other identifying information regarding any child referenced in the reports. The county may review the incident reports to ensure that the group home facilities have taken appropriate action to ensure the health and safety of the residents of the facility.

(f) The department shall notify the residential community care facility of its obligation when it is required to comply with this section.

SEC. 3. Section 1567.3 of the Health and Safety Code is amended to read:

1567.3. (a) No licensed community care facility may receive a ward of the juvenile court as described in Section 602 of the Welfare and Institutions Code until the probation officer of the county in which the community care facility is located has received notice, in writing, by fax, or electronically transmitted, of the placement, as prescribed in Section 740 of the Welfare and Institutions Code, including the name of the ward, the juvenile record of the ward, including any known prior offenses or gang affiliation, and the ward's county of residence, from the probation officer of the county making the placement, or, in the case of a ward of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, the parole officer in charge of the case. The licensed community care facility shall maintain a copy of this notice on file as evidence of compliance with this section.

(b) (1) The probation officer of a county making an out-of-county placement of a ward of the juvenile court as described in Section 602 of the Welfare and Institutions Code shall notify the probation officer of the county in which the community care facility is located at least 24 hours prior to receipt of the ward by the licensed community care facility. If the ward is received on a weekend or holiday, notification shall be made by the end of the next business day.

(2) A probation officer of a county making an out-of-county placement of a ward of the juvenile court who makes a notification pursuant to paragraph (1) shall also send, at that time, a copy of the notification to the community care facility where the ward is being placed.

SEC. 4. Section 740 of the Welfare and Institutions Code is amended to read:

740. (a) Any minor adjudged to be a ward of the court on the basis that he or she is a person described in Section 602 and who is placed in a community care facility shall be placed in a community care facility within his or her county of residence, unless both of the following apply:

(1) He or she has identifiable needs requiring specialized care that cannot be provided in a local facility or his or her needs dictate physical separation from his or her family.

(2) The county of residence agrees to pay the placement county the costs of providing services to the minor, pursuant to Section 1566.25 of the Health and Safety Code.

(b) (1) Before the placement of a minor adjudged to be a ward of the court on the basis that he or she is a person described in Section 602 in any community care facility outside the ward's county of residence, the probation officer of the county making the placement, or in the case of a ward of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, the parole officer in charge of his or her case, shall send, via mail, delivery, fax, or electronically, written notice of the placement, including the name of the ward, the juvenile record of the ward (including any known prior offenses), and the ward's county of residence, to the probation officer of the county in which the community care facility is located. It is the intention of the Legislature, in regard to this requirement, that the probation officer of the county making the placement, or in the case of a ward of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, the parole officer in charge of his or her case, shall make his or her best efforts to send, via mail, fax, or electronically, or to hand deliver, the notice at least 24 hours prior to the time the placement is made. When that placement is terminated, the probation officer of the county making the placement, or in the case of a ward of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, the parole officer in charge of his or her case, shall send notice thereof to any person or agency receiving notification of the placement.

(2) When it has been determined that it is necessary for a ward whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program to be placed in a county other than the ward's

parents' or guardians' county of residence, the specific reason the out-of-county placement is necessary shall be documented in the ward's case plan. If the reason is lack of resources in the sending county to meet the specific needs of the ward, those specific resources needs shall be documented in the case plan.

(3) When it has been determined that a ward whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program is to be placed out-of-county and that the sending county is to maintain responsibility for supervision and visitation of the ward, the sending county shall develop a plan of supervision and visitation activities to be performed, and shall specify that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding known or suspected gang affiliation or dangerous behavior of the ward that indicates the ward may pose a safety concern in the receiving county. The sending county shall send to the receiving county a copy of the plan of supervision and visitation, in addition to the notice of placement required in paragraph (1), prior to placement of the ward. If placement occurs on a holiday or weekend, the plan of supervision and visitation and the notice of placement shall be provided to the receiving county on or before the end of the next business day.

(4) When it has been determined that a ward whose placement is funded through the Aid to Families with Dependent Children-Foster Care program is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the ward, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the ward, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the ward in the receiving county. Additionally, the notice of placement required by paragraph (1) shall be provided to the receiving county prior to placement of the ward in that county. Upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding known or suspected gang affiliation or dangerous behavior of the ward that indicates the ward may pose a safety concern for the receiving county.

(5) The probation department of a receiving county that has a group home in which a minor is placed by the probation department of another county, after adjudication of the minor for any felony offense, may disclose to the sheriff of the receiving county or to the municipal police department of the city in which the group home is located, the name of the minor, the felony offense or offenses for which the minor has been adjudicated, and the address of the group home. This information shall be utilized only for law enforcement purposes and may not be utilized in a manner that is inconsistent with the rehabilitative program in which the minor has been placed or with

the progress the minor may be making in the placement program. Notwithstanding any other law, the information provided by the probation department to a law enforcement agency under this paragraph may be provided to other law enforcement personnel for the limited law enforcement purposes described in this paragraph, but shall otherwise remain confidential.

(c) Notwithstanding subdivision (e) of Section 1538.5 of the Health and Safety Code, at the request of the probation department of the county in which the group home facility is located, the group home shall notify a probation official designated by the probation department to receive notifications pursuant to this subdivision, of unusual incidents concerning a ward placed by the sending county that involved a response by local law enforcement or emergency services personnel, including runaway incidents. The notification shall include identifying information about the ward. A group home facility shall notify the designated probation official of a requesting probation department of an unusual incident no later than the applicable deadline imposed by law or department regulation for a group home facility to notify the licensing agency of the unusual incident. The requesting probation department shall maintain the confidentiality of any identifying information about the ward contained in the notification and shall not share, transfer, or otherwise release the identifying information to a third party unless otherwise authorized by state or federal law.

(d) A minor, the parent or guardian of a minor, and counsel representing a minor or the parent or guardian of a minor may petition the juvenile court for the review of a placement decision concerning the minor made by the probation officer pursuant to subdivision (a). The petition shall state the petitioner's relationship to the minor and shall set forth in concise language the grounds on which the review is sought. The court shall order that a hearing shall be held on the petition and shall give prior notice, or cause prior notice to be given, to the persons and by the means prescribed by Section 776, and, in instances in which the means of giving notice is not prescribed by that section, then by any means as the court prescribes.

(e) If a minor is placed in a community care facility out of his or her county of residence and is then arrested and placed in juvenile hall pending a jurisdictional hearing, the county of residence shall pay to the probation department of the county of placement all reasonable costs resulting directly from the minor's stay in the juvenile hall, provided that these costs exceed one hundred dollars (\$100).

(f) If, as a result of the hearing in subdivision (d), the minor is remanded back to his or her county of residence, the county of residence shall pay to the probation department of the county of placement, in addition to any payment made pursuant to subdivision (e), all reasonable costs resulting directly from transporting the minor to the county of residency, provided that these costs exceed one hundred dollars (\$100).

(g) Claims made by the probation department in the county of placement to the county of residence, pursuant to subdivisions (e) and (f), shall be paid within 30 days of the submission of these claims and the probation department in the county of placement shall bear the remaining expense.

(h) As used in this section:

(1) “Community care facility” shall be defined as provided in Section 1502 of the Health and Safety Code.

(2) “Gang affiliation” shall have the same meaning as defined for data entry into the CalGang system.

(3) “Group home” has the same meaning as provided in paragraph (1) of subdivision (g) of Section 80001 of Title 22 of the California Code of Regulations.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.